

The Fifth Avenue Association Business Improvement District and Local 210, Production, Merchandising and Distribution Employees Union, International Brotherhood of Teamsters, AFL-CIO. Case AO-330

October 20, 1995

ADVISORY OPINION

BY MEMBERS BROWNING, COHEN, AND
TRUESDALE

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on September 26 and October 11, 1995, The Fifth Avenue Association Business Improvement District (the Employer), filed a Petition for Advisory Opinion and brief in support as to whether the Board would assert jurisdiction over its operations. In pertinent part, the petition and brief allege as follows:

1. A proceeding, Case SE-58981, is currently pending before the New York State Employment Relations Board (NYSERB), in which an investigation of an alleged question concerning representation among certain guard and nonguard employees of the Employer is requested.

2. The Employer is a not-for-profit New York corporation with its principal place of business located at 350 Fifth Avenue, New York, New York, where it has been engaged since 1993 in the operation of a business improvement district (BID) providing security and sanitation services, among others, to retail and wholesale businesses and others that reside within the district, located along stretches of Fifth Avenue and 57th Street in midtown Manhattan.

3. During the year ending June 30, 1995, a representative period, the Employer derived gross revenues in excess of \$1 million and purchased and received Christmas trees and other holiday decorations, trash receptacles, office equipment, radios, insurance and other goods, materials, and services used in the course and conduct of its business operations, valued in excess of \$50,000, from manufacturers, distributors, and other suppliers located outside the State of New York and/or from suppliers located inside the State of New York who received the foregoing from manufacturers and/or others located outside the State of New York. In addition, the Employer provides, annually, sanitation and security services valued in excess of \$50,000 on behalf of numerous firms, building owners/operators, and other retail and nonretail businesses within the State of New York who themselves meet the Board's various commerce standards and are subject to its jurisdiction.

4. The Employer is unaware whether the Union admits or denies the aforesaid commerce data and the

NYSERB has not made any findings with respect thereto.

5. There are no representation or unfair labor practice proceedings involving the same labor dispute pending before the Board

All parties were served with a copy of the Petition for Advisory Opinion. On October 2, 1995, the Union filed a response. While the Union does not dispute the alleged commerce data submitted by the Employer, it contends that a question exists whether the Employer is a political subdivision exempt from the Board's jurisdiction under Section 2(2) of the Act. In support of its position the Union asserts that the Employer is registered with the New York Attorney General's office as a charitable institution, formed within the meaning of Section 501(c)(3) of the Internal Revenue Code to provide services for the relief and support of the poor, homeless, and indigent living within a certain geographical area of midtown New York City. The Union further asserts that the Employer is established pursuant to New York State general municipal law section 980, et seq., which permits a special tax to local businesses within particular geographical areas to raise funds specifically for funding the BID. In addition, the Union asserts that the corporate form under which the Employer was established designated as voting members of the corporation, inter alia, the mayor of the City of New York, the comptroller of the City of New York, the Borough president of Manhattan County, and the New York City elected council members representing the council district in which the Employer is located, and that these individuals also elect directors of the corporation. Further, the Union asserts that the incorporators of the Employer who executed the Certificate of Incorporation were The Honorable David N. Dinkins, mayor of the City of New York; The Honorable Elizabeth Holtzman, comptroller of the City of New York; The Honorable Ruth Messinger, president of the Borough of Manhattan; and The Honorable Tom Duane, New York City council member; and that the Certificate of Incorporation was approved by The Honorable William P. McCooe, justice of the Supreme Court of the State of New York.

Having duly considered the matter,¹ the Board is of the opinion that, based on the Employer's undisputed allegations, the Employer would satisfy the Board's commerce standards.² We are unable in this proceeding to resolve the issue raised in the Union's response, however, i.e., whether the Employer is a political subdivision exempt from the Board's jurisdiction under

¹ The Board has delegated its authority in this proceeding to a three-member panel.

² See, e.g., *Globe Security Systems*, 137 NLRB 109 (1962), applying a \$50,000 nonretail standard to employers providing guard or security services. The Employer meets the Board's nonretail indirect inflow standard.

Section 2(2) of the Act. As the Union acknowledges, such a determination would be inappropriate in the context of this proceeding; the Board's advisory opinion proceedings under Section 102.98(a) are designed primarily to determine whether an employer's operations meet the Board's commerce standard for asserting jurisdiction.³ Thus, while we are able to advise the

³See *St. Paul Ramsey Medical Center*, 288 NLRB 913 (1988); and *Narcotic & Drug Research*, 288 NLRB 912 (1988). See also *Fashion Center District Management*, 318 NLRB 401 (1995).

Employer that it satisfies the Board's monetary standards for asserting jurisdiction, we are unable in this proceeding to resolve the issue raised by the Union.⁴

⁴The Board's advisory opinion proceedings under Sec. 102.98(a) are designed primarily to determine whether an employer's operations meet the Board's "commerce" standards for asserting jurisdiction. Accordingly, the instant Advisory Opinion is not intended to express any view whether the Board would certify the Union as representative of any unit involved here under Sec. 9(c) of the Act. See generally Sec. 101.40 of the Board's Rules.